

REMARKS/ARGUMENTS

In response to the Office Action of September 08, 2006, Applicants request re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Claim Status/ Support for Amendments

Claims 1-3, 5-11 remain in this application. Claim 4 has been cancelled herein.

In the outstanding Office action, the Examiner indicated original claim 4 contains allowable subject matter. Therefore, independent claims 1 and 2 have been amended herein to include the limitations of claim 4. No new matter has been added by the amendments to the claims made herein. Claims 3, 5-11 depend either directly or indirectly from base claims 2; thus, these claims should be fully considered and allowed by the Examiner.

The specification and Figures have been amended herein for clarity and proper understanding of the invention, as suggested by the Examiner. No new matter has been added to the specification and/or figures.

Drawings

The drawings are objected to under 37 CFR 1.83(a) because they allegedly fail to show the height (19), the stop (50), the groove (52), the ridge (51), a plug (43), inclined ramp (44), the

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upper portion (46), the body (47), the rails (48,49), the central area (60), the bore (61,62), as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

The drawings are also objected to by the Examiner as allegedly failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: (19,50,52,51,43,44,46,47,48,49,60,61,62).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "link", "rails" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

In Fig. 2, reference no. "21" has been corrected to reference no. --19--, as disclosed in the specification at page 16, line 1. Applicants have also removed the stop (50), ridge (51) and groove (52) features from the specification, since these features represent one alternative embodiment and are not essential for a proper understanding of the invention. In addition, Applicants have amended Figs. 1 and 2 to clearly show the plug (43), inclined ramp (44), upper portion (46), body (47), plug bore (61), and body bore (62). The rails and central area are currently not claimed and have been disclosed in the specification as "not shown" since

these features are not essential for proper understanding of the invention.

Lastly, Applicant do not agree with the Examiner's determination that the "link (40)" as specified in original claims 3, 8 is not shown in the drawings. Applicants point the Examiner's attention to Fig. 1, as originally filed, and the original specification at page 9, lines 3-17.

Rejection under 35 USC 102(b)

Claims 1-3 and 5-11, as originally presented, currently stand rejected under 35 U.S.C. 102(b) as being allegedly anticipated by U.S. Patent No. 5,865,848 to Baker.

The Examiner asserts that Baker discloses, Claims 1-3,5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker (5,865,848).

With respect to claims 1, 2, the Examiner alleges that Baker discloses a spinal fusion device (100) for adjusting space between vertebrae comprising a hollow body having an upper section (102) having a top surface (162) and dependent sidewalls (106,108), the sidewalls terminating in a first inclined plane (112,112a), a lower section (104) having a bottom surface (160) and upstanding walls (126,128) terminating in a second inclined plane (142,142a), the first inclined plane and the second inclined plane being complementary to each other in movable contact and a distractor, as

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set forth in column 3, lines 18-21, located between the upstanding walls, the distractor having adjustment means for moving the upper section relative to the lower section thereby increasing the distance between the top and bottom surfaces; asset forth in column 3, lines 54-67, column 4, lines 1-9.

With respect to claims 3, 5-11, the Examiner asserts that Baker discloses all the limitations as set forth in column 3, lines 9-67, column 4, lines 1-467, column 5, lines 1-56 and as best seen in FIGS.1-7.

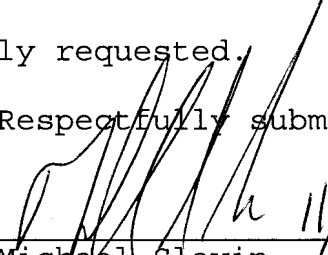
Applicants respectfully disagree that the subject matter of original claims 1-3 and 5-11, are anticipated by Baker. However, in the interest of compact and efficient patent prosecution Applicants have amended independent claims 1 and 2 to include the subject matter of cancelled claim 4, as suggested by the Examiner in the outstanding official action. Claims 3, 5-11 directly or indirectly depend from allowable claims 1 and 2 and therefore should be deemed allowable as well.

Accordingly, Applicant respectfully submit that all of the claims, as instantly presented, now distinguish over Baker and respectfully request that this rejection under 102(b) now be withdrawn.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,


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FIG. 1

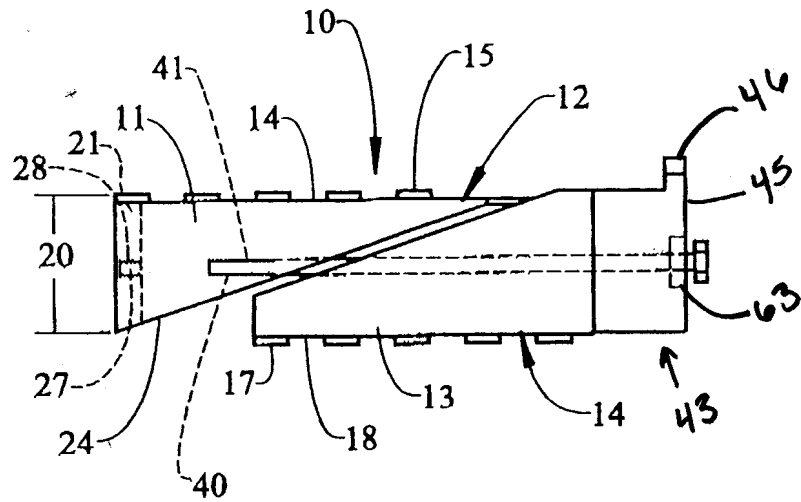


FIG. 2

